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March 6, 2012

By Electronic Filing

The Honorable Dickinson R. Debevoise
Martin Luther King, Jr. Federal Building & U.S. Courthouse
50 Walnut Street
Newark, N.J. 07101

Re: *Sperry Associates Federal Credit Union v. CUMIS Insurance Society, Inc.*
Case 2:10-cv-00029-DRD-MAS

Dear Judge Debevoise:

As you are aware, this office represents Sperry Associates Federal Credit Union ("Sperry") the Plaintiff in the above captioned matter. On March 1, 2012, Your Honor rendered a decision on the motion of Sperry for partial summary judgment and the motion of CUMIS Insurance Society, Inc. ("CUMIS") for summary judgment or in the alternative partial summary judgment. Sperry's motion was granted in its entirety and CUMIS's motion was denied in its entirety.

Pursuant to the Court's direction, Sperry has prepared a proposed order (annexed hereto) and has attempted to secure CUMIS's approval of the proposed order. Based on CUMIS's input Sperry changed the original draft of the proposed order, however Sperry has been unable to secure CUMIS's approval of the current proposed order.

CUMIS objects to section 3.c. of the order as it is CUMIS's position that the Court did not come to the conclusion that CUMIS has a duty to indemnify Sperry for its losses. Sperry disagrees, as on pages 6 and 11 of the decision the Court states: "Sperry moves for partial summary judgment as to the first count of its Amended Complaint, for Declaratory relief under Coverage Part A of the Bond, declaring that Cumis is under a duty to indemnify Sperry for any losses..." As the Court granted Sperry's motion it is our position that 3.c is accurate.

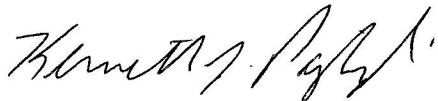
Additionally, it is Sperry's position that as the damages in this matter are of a liquidated nature the issue is ripe for determination on a summary basis. Accordingly, as part of its proposed order Sperry included a direction that the plaintiff may move for summary judgment on the issue of damages pursuant to a briefing schedule to be set by the Court. CUMIS has objected to this direction and the parties have not agreed on this point.

It is respectfully requested, that the Court consider Sperry's proposed direction that the parties move forward on the issue of damages on a summary basis. Essentially, each party should be able to make a factual showing of damages based on evidence already in the record, making the resolution of the issue judicially efficient. Ultimately, if contractual damages were decided, the only remaining issue in this matter would be the potential extra-contractual damages as a result of CUMIS's bad faith.

For the foregoing reasons Sperry respectfully requests that this Court adopt Sperry's proposed order.

I thank you for your consideration of these matters.

Respectfully,

A handwritten signature in black ink, appearing to read "Kenneth J. Pagliughi".

Kenneth J. Pagliughi, Esq.
Scott A. Rosenberg, P.C.

cc: Michael A. Shipp, U.S.M.J. by Electronic Filing
Counsel of Record by Electronic Filing

SPERRY ASSOCIATES FEDERAL
CREDIT UNION,

Plaintiff,

-against-

CUMIS INSURANCE SOCIETY, INC.,

Defendants.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Hon. Dickinson R. Debevoise

10-CV-00029-DRD-MAS

[PROPOSED]

ORDER GRANTING THE MOTION OF
SPERRY ASSOCIATES FEDERAL CREDIT
UNION FOR PARTIAL SUMMARY JUDGMENT
AND DENYING THE MOTION OF CUMIS
INSURANCE SOCIETY, INC. FOR SUMMARY
JUDGMENT OR IN THE ALTERNATIVE
PARTIAL SUMMARY JUDGMENT

The motion of Plaintiff Sperry Associates Federal Credit Union ("Sperry") for partial summary judgment on the first count of its Amended Complaint in this action (the "Sperry Motion"); and the motion of Defendant CUMIS Insurance Society, Inc. ("CUMIS") for summary judgment dismissing Sperry's complaint in its entirety, or, in the alternative, partial summary judgment (the "CUMIS Motion"), came regularly for hearing before this Court on February 21, 2012 at 10:00 a.m. (the "Hearing"), Kenneth J. Pagliughi of Scott A. Rosenberg, P.C. having appeared as attorney for Sperry, and Michael R. Davisson of Sedgwick LLP having appeared as attorney for CUMIS.

After consideration of the arguments of counsel made before the Court at the Hearing, all admissible evidence, and the briefs and authorities of the parties, the Court hereby makes the following findings:

1. Sperry is entitled to judgment as a matter of law for declaratory relief as to Count One of the Amended Complaint;

2. CUMIS is not entitled to summary judgment or in the alternative partial summary judgment dismissing the Amended Complaint or any of the remaining causes of action in the Amended Complaint;

3. With respect to Count One of the Amended Complaint the Court hereby CONCLUDES AND DECLARES as follows:

- a. That CU National and Michael McGrath are “employees” of Sperry as the term is defined within the Bond (and described in the Sperry Motion) issued by CUMIS to Sperry;
- b. That Michael McGrath acted with manifest intent to cause Sperry to suffer a loss; and
- c. That CUMIS has a duty to indemnify Sperry for these losses under Coverage Part A of the Bond (as described in the Sperry Motion).

AND IT IS HEREBY ORDERED, that:

1. The Sperry Motion is granted in its entirety;
2. The CUMIS Motion is denied in its entirety; and
3. Sperry may move for summary judgment on the issue of damages pursuant to a briefing schedule to be set by this Court.

Dated: Newark, New Jersey

_____, 2012

SO ORDERED:

Honorable Dickinson R. Debevoise, U.S.D.J